DEPARTMENT OF STATE REVENUE

04-20130573.LOF

Letter of Findings: 04-20130573
Gross Retail Tax
For the Year 2011

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Use Tax – Vehicle Purchase.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-2(a); IC § 6-2.5-4-1(b), (c); IC § 6-8.1-5-1(c); Rhoade v. Ind. Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); USAir, Inc. v. Ind. Dep't of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993); Fell v. West, 73 N.E. 719 (Ind. Ct. App. 1905); Dept. of Treasury v. Dietzen's Estate, 21 N.E.2d 137 (Ind. 1939); 45 IAC 2.2-3-4.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who became interested in purchasing a particular car. Taxpayer dealt with a Kentucky dealer to purchase that vehicle. The Kentucky dealer acquired this particular vehicle from a California dealer for resale to Taxpayer. Taxpayer paid the Kentucky dealer the purchase price for the car and arranged for a third-party carrier to transport the vehicle from California and deliver it to an Ohio location.

Taxpayer titled the car with a Montana LLC. As an individual, Taxpayer is the single member of the Montana LLC.

The Department of Revenue issued a "Proposed Assessment" for use tax based on the purchase price of the vehicle.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was held during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Use Tax – Vehicle Purchase.

DISCUSSION

Taxpayer argues that he does not owe use tax because the car was never "used" in Indiana.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." As Indiana courts have long held, "In construing tax statutes a liberal rule of interpretation must be indulged in order to aid the taxing power of the state." Dept. of Treasury of Ind. v. Dietzen's Estate, 21 N.E.2d 137, 139 (Ind. 1939). "The statutes of this state relating to the assessment and collection of taxes are liberally construed in favor of the taxing powers." Fell v. West, 73 N.E. 719, 722 (Ind. Ct. App. 1905).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

> (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
>
> (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

The complementary use tax is imposed under IC § 6-2.5-3-2(a), which states:

> An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal

property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

The Department's regulation, 45 IAC 2.2-3-4, provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

The use tax is functionally equivalent to the sales tax. See Rhoade v. Ind. Dep't of State Revenue, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002). By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. Id.; USAir, Inc. v. Ind. Dep't of State Revenue, 623 N.E.2d 466, 468–69 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. IC § 6-2.5-3-2; Rhoade, 774 N.E.2d at 1048. For purposes of Indiana use tax, a taxable retail transaction occurs when; (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b), (c); IC § 6-2.5-3-2(a).

Taxpayer has provided documentary information establishing that Taxpayer purchased the vehicle from a Kentucky dealer and that Taxpayer – or his single member LLC – paid the Kentucky dealer the price of the vehicle. Taxpayer has provided documentary information establishing that the car was transported from California by a third-party carrier and delivered to Ohio. Taxpayer has provided information establishing that, during the brief period that Taxpayer retained the vehicle, it was driven exclusively in Ohio. Taxpayer has provided documentary evidence establishing that Taxpayer retained ownership of the vehicle for approximately 45 days before being traded to an Ohio dealership for yet another vehicle.

Taxpayer has met his burden of proof under IC § 6-8.1-5-1(c) of establishing that the Department's use tax assessment was erroneous because the vehicle was not "consumed," stored, nor used in Indiana.

FINDING

Taxpayer's protest is sustained.

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